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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,508	02/20/2001	Clemens Schmick	31512-168975	5369

7590 06/04/2002
VENABLE
Post Office Box 34385
Washington, DC 20043-9998

EXAMINER

LOPEZ, CARLOS N

ART UNIT	PAPER NUMBER
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1731

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DATE MAILED: 06/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/785,508

Applicant(s)

SCHMICK ET AL.

Examiner

Carlos Lopez

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- 1) Claims 1-15, 19 and 20 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a channel comprising a top wall and two side walls, does not reasonably provide enablement for a channel formed by two walls. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Applicant defines a channel as being made of three walls. However, Applicant's claimed channel, as recited in claim 1, may be formed from two walls, four walls or an infinite number of walls.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 2) Claims 4-7 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the structural relation between the tooth belt and endless flexible element.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

3) Claims 1-3, 9, 10, 12, 13, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Garthaffner et al (US 4,817,638). Garthaffner discloses a channel for moving smoking material 12. The channel being formed from elongated walls having endless flexible belt 23 and recessed conveyors 21. As for claim 20, conveyor 13 provides smoking material to the channel formed from belt 23 and recessed conveyor 22 (Figure 1). As for claim 12, the recessed conveyor 21 is coated with a current conducting material (Column 3, lines 29ff). As for claim 13, the recesses of conveyor 21 decrease in width. As for claim 19, the recess of conveyor 21 are equidistant from each other (Figure 1).

4) Claims 1-3, 9, 10, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Dombek (US 6,390,099). Dombek discloses a channel for moving smoking material 4. The channel being formed from elongated walls having endless flexible belts 18 and 20 and recessed conveyors 12 and 24 serving as

means for moving the elongated walls 18 and 20. As for claim 20, conveyor 2 provides smoking material to the channel formed from belts 18, 20 and recessed conveyors 12 and 24 (Figure 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5) Claims 8, 14 and 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garthaffner et al (US 4,817,638). Garthaffner is silent disclosing the material forming the endless belt. However, Examiner takes Official Notice that belts are conventionally formed from polyurethane elastomers. It would have been obvious at the time the invention was made to one of ordinary skill in the art to have used a belt made from conventional materials since Examiner takes official notice that belts are made of polyurethane elastomers. Applicant is referred to US 3,592,334 where evidence supporting Examiner's Official Notice is disclosed.

As for claim 8, Garthaffner would be expected to have a drive means for the pulleys of belt 23 that forms the conveying channel.

As for claim 15, the distance between each recess is a multiple of the path of formed by Garthaffner's conveying channel.

Allowable Subject Matter

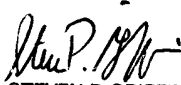
Claims 4-7, 11 and 16-18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, first and second paragraphs, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The cited prior art does not disclose or reasonably suggest a tooth belt for conveying materials in a channel, as recited in claims 4-7. Additionally, the cited prior art does not disclose or reasonably suggest a three wall channel as recited in claims 16-18, wherein the movable material recess surface is at least on one of a second or third walls of the channel. Similarly, the cited prior art does not disclose or reasonably suggest a channel have two movable recessed stream contacting surface as recited in claim 11.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is (703) 605-1174. The examiner can normally be reached on 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on (703) 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7718 for regular communications and (703) 305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.


STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
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